The Real Access Alliance has taken the position in *ex parte* communications with the Federal Communications Commission that the number or percentage of property owners who have not entered into exclusive contracts is sufficient to conclude that Verizon is not one of the entities sufficiently harmed by exclusive contracts to warrant action by the Federal Communications Commission. As a matter of both procedure and relevance, these arguments should be stricken.

I. Relevance

Once it issues a Notice of Proposed Rulemaking, the Federal Communications Commission is required to consider the possible effects on all persons, and not merely on the party that may have originally requested that rulemaking occur. In this respect, a rulemaking process differs from an adversarial court proceeding. A lawsuit can be dismissed because the plaintiff has not been harmed by the actions in question and therefore lacks standing to bring suit. However, in a rulemaking process, once it is established that harm is occurring to anyone, it is improper to consider whether Verizon is one of the harmed entities.

By the Real Access Alliance's own admission, there are some landlords who have entered into exclusive contracts that prevent their tenants from choosing any service provider other than the holder of the exclusive contract. Even if the number of buildings that Verizon can chose to serve is sufficient so that Verizon is not harmed, which I do not concede, the mere fact that the tenants are prohibited from choosing any service provider other than the holder of the exclusive contract for the building where they reside is sufficient to establish that they are harmed persons. The question of whether harm occurs to both legal persons (corporations) and natural persons (humans) or only to natural persons (the tenants) and not to Verizon (a legal person) is irrelevant.

Unlike the Federal Aviation Administration, which is charged with promoting air travel and therefore should consider the financial state of the corporations that it regulates, the Federal Communications Commission has an unequivocal mandate to consider the interests of natural persons (humans). In particular, 47 U.S.C. 151 states that the Federal Communications Commission is created to make communications services available for "all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." Both the phrase "all the people", which includes natural persons (humans), and the list of characteristics on the basis of which discrimination is prohibited, many of which apply solely to natural persons (humans) and not to corporations, prove that the Federal Communications Commission was created to further

the interests of natural persons in receiving the services that they desire, and not merely the financial interests of corporations in profiting from the providing of those services, with or without exclusive contracts. Since the Real Access Alliance has conceded that some tenants are being prevented from choosing service providers, the Federal Communications Commission must conclude that exclusive contracts are harming those tenants, who are unquestionably persons. It is irrelevant whether the harmed parties also include legal persons (such as Verizon) or only natural persons (such as most or all of the tenants).

I do not pretend to know exactly which providers would be more profitable if tenants were required to pay whatever prices their landlords negotiated with exclusive providers and which would be more profitable if tenants could elect those most desired by tenants or most affordable to tenants, nor does it matter. Even if exclusive contracts are of benefit to landlords and service providers, the Federal Communications Commission is required by statute to consider the interests of tenants. Every pro-exclusivity comment has been made on behalf of business interests, such as landlords, service providers, and organizations of landlords and service providers. No tenant has commented in favor of exclusive contracts, nor is it likely than any ever will.

II. Untimely raising of new issues

The Real Access Alliance did not raise this argument during the original comment period, the extended comment period, or even the reply comment period. Allowing it to be introduced this late date unfairly prejudices members of the public who were entitled to file reply comments in response to the Real Access Alliance's arguments, and cannot no longer do so because the time period has expired.